

TITLE 326 AIR POLLUTION CONTROL DIVISION

LSA Document #12-500

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from February 6, 2013, through March 8, 2013, on IDEM's draft rule language. IDEM received comments from the following parties:

B Paul Consulting, LLC on behalf of SO₂ Project (BP)
Bingham Greenebaum Doll on behalf of CASE Coalition (BGD)
Indiana Energy Association on behalf of the Indiana Utility Group (IEA)
American Electric Power Service Corporation (AEP)

Following is a summary of the comments received and IDEM's responses thereto.

Comment: Change the tense of the proposed amendments to 326 IAC 2-1.1-5 from passive voice to active voice. The introductory part of 326 IAC 2-1.1-5(a) is confusing and includes a double negative. The commenter provided suggested language. (BP)

Comment: The proposed amendments include very confusing language, double negatives, and suggest an automatic finding of an interference with the national ambient air quality standards (NAAQS) if one of the listed conditions is met in proposed 326 IAC 2-1.1-5(a). The commenter provided suggested language. (BGD)

Response: IDEM agrees and has revised the language in 326 IAC 2-1.1-5(a) in line with the commenter's suggested language.

Comment: Remove the phrase "will interfere with attainment or maintenance of any National Ambient Air Quality Standards (NAAQS) set forth in 326 IAC 1-3 because the approval" from the proposed 326 IAC 2-1.1-5(a). This language could be interpreted to prohibit source modifications that themselves do not trigger the nonattainment requirements of 326 IAC 2-3, as a result of a theoretical claim that the modification interferes with the attainment of the NAAQS. (IEA) (AEP)

Response: The "interference" language cannot be removed because it is a key part of the requirements in this section. U.S. EPA's requirements for the review of new sources and modifications at 40 CFR 51.160 requires states to have rules in place to determine if the construction or modification will result in interference with attainment or maintenance of a national standard in the state in which the proposed source or modification is located or in a neighboring state. IDEM believes that the modified draft rule language addresses the commenter's concern for the potential misinterpretation of language.

Comment: IDEM's proposed language in 326 IAC 2-1.1-5(b) gives IDEM authority to establish emission limitations in operating permits to prevent NAAQS violations. This language seems to run counter to IDEM's express purpose of limiting the authority to evaluate potential NAAQS impacts to preconstruction permitting actions. IDEM should delete the reference to operating permits in 326 IAC 2-1.1-5(b) so that it is clear that IDEM can only establish permit conditions to address potential NAAQS issues in preconstruction permits. Emission limits can

be established in the preconstruction permit and incorporated into the operating permit. (BP)

Comment: IDEM accidentally leaves a reference to operating permits in 326 IAC 2-1.1-5(b) of the proposed rules despite IDEM's stated objective to limit the authority to evaluate potential NAAQS impacts to preconstruction permitting actions. (BGD)

Comment: IDEM should delete the proposed 326 IAC 2-1.1-5(b) because it conflicts with IDEM's stated goals in this rulemaking, there is no stated basis for this change, and the apparent goals of this section are already available through other rules. By allowing emission limits to be set in operating permits defeats the goal of clarifying applicability to be limited to preconstruction approvals. The original 326 IAC 2-1.1-5(b) related solely to allowing IDEM to require modeling to ensure compliance with the NAAQS. The current proposal sets forth authority to establish emission limits. Other existing rules give the commissioner the authority to impose new or revised emission limits in operating permits where needed. For example, the Title V rules at 326 IAC 2-7-9(a) allows permits to be reopened and emission limits to be established and the FESOP rules at 326 IAC 2-8-8(a) allow such reopening. (IEA) (AEP)

Response: IDEM agrees and has removed the proposed revisions to 326 IAC 2-1.1-5(b).